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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|-------------------------------------|------------------|
| 10/046,279 | 01/16/2002 | Troy Delzer | 53394.000550 | 2400 |
| 7590 05/13/2004 Christopher C. Campbell, Esq. Hunton & Williams Suite 1200 1900 K Street, NW Washington, DC 20006-1109 | | | EXAMINER HECKENBERG JR, DONALD H | |
| | | | ART UNIT 1722 | PAPER NUMBER |
| DATE MAILED: 05/13/2004 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/046,279

Applicant(s)

DELZER ET AL.

Examiner

Donald Heckenberg

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1722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-62 is/are pending in the application.
- 4a) Of the above claim(s) 49-62 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-48 is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date --
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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1. Applicant's election with traverse of Group I (claims 1-48) in response to the previous Office Action is acknowledged. The traversal is on the grounds that the product of Group III (claims 59-62) specifically recite distribution of particulate matter as recited in claim 1. This is not found persuasive because despite reciting the particulate matter to be distributed using the apparatus of claim 1, Group III are still product claims. However, the patentability of a product does not how the product is made. In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985); In re Brown, 459 F.2d 531, 535, 173 USPQ 685, 688 (CCPA 1972); In re Pilkington, 411 F.2d 1345, 1348, 162 USPQ 145, 147 (CCPA 1969); MPEP § 2113; see also In re Marosi, 710 F.2d 798, 802, 218 USPQ 289, 292-93 (Fed. Cir. 1983) (holding once the examiner provides a rationale tending to show the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and a prior art product). Thus, the patentability of Group III claims of the instant case do not require particulate matter to be distributed in the fibrous material using the apparatus of claim 1, and the product as claimed can be made by another and

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materially different apparatus as set forth in the previous Office Action.

2. Claims 1-48 are allowed.

3. The following is a statement of reasons for the indication of allowable subject matter:

The prior art of record fails to teach or suggest an apparatus for dry forming an absorbent core composite as defined in claims 1, 37, or 44.

The closest prior art is disclosed by EP 0 958 801 A1 (hereinafter "EP '801"). EP '801 discloses an apparatus for forming absorbent articles which includes a rotatable drum (21), two sheet supply mechanisms (31a and 33a), and a supply mechanism (24) for supplying the absorbent material to the first casing supply. However, EP '801 does not disclose or suggest both a fibrous material supply mechanism for supplying fibrous material to overlie the first casing supply at a first location and a separate particulate matter supply mechanism for depositing particulate matter onto the fibrous material at a third location.

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4. The following references are cited as being related to the instant invention:

Heritage (U.S. Pat. No. 2,940,133) discloses an apparatus for forming dry felted structures.

Chapman (U.S. Pat. No. 3,061,878) discloses an apparatus for forming composite products with two sheet supplying mechanisms and a material supply mechanism for depositing material between the two sheets (see fig. 5).

DE 1 510 427 discloses an apparatus an apparatus for forming absorbent articles.

5. This application is in condition for allowance except for the formal matters regarding the restriction requirement and non-elected claims as described above.

Prosecution on the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.

A shortened statutory period for reply to this action is set to expire TWO MONTHS from the mailing date of this letter.

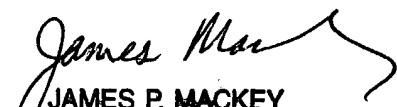
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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald Heckenberg whose telephone number is (571) 272-1131. The examiner can normally be reached on Monday through Friday from 9:30 A.M. to 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker, can be reached at (571) 272-1151. The official fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <<<http://pair-direct.uspto.gov>>>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).


Donald Heckenberg
May 7, 2004


JAMES P. MACKEY
PRIMARY EXAMINER

5/11/04